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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Haiti

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report, accompanied by recommendations, on the situation of human rights in Haiti, prepared by Mr. Adama Dieng, independent expert, in accordance with Economic and Social Council decision 1997/262 of 22 July 1997.

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ANNEX

Report on the situation of human rights in Haiti prepared by Mr. Adama Dieng, independent expert, in accordance with Economic and Social Council decision 1997/262

CONTENTS

		Paragraphs	Page
I.	Introduction	1 - 6	3
II.	The social and political context	7 - 13	4
III.	The right to health	14 - 31	5
IV.	The right to education	32 - 37	10
V.	Participation in development	38 - 43	11
VI.	The elections	44 - 50	13
VII.	The governmental "crisis"	51 - 55	14
VIII.	International cooperation	56 - 61	16
IX.	The prisons	62 - 73	17
X.	The judicial system	74 - 95	21
XI.	Conclusion	96 - 99	25

I. INTRODUCTION

1. In 1995, the Commission on Human Rights, after considering the report of the Special Rapporteur for Haiti, Mr. Marco Tulio Bruni Celli (E/CN.4/1995/59), by its resolution 1995/70 requested the Secretary-General to appoint an independent expert to have responsibility for providing assistance to the Haitian Government in the area of human rights, to examine the development of the situation in Haiti in that area, and to monitor the fulfilment by Haiti of its obligations in that field.

2. The Economic and Social Council having endorsed the request of the Commission through its decision 1995/281, the Secretary-General, on 31 July 1995, appointed Mr. Adama Dieng as the independent expert. On 1 November 1995, the independent expert communicated his report (A/50/714) to the Secretary-General; the report was then submitted to the General Assembly at its fiftieth session. Another report (E/CN.4/1996/94), which reproduced a large part of the report submitted to the Assembly, but which was supplemented by a section on economic, social and cultural rights, was submitted to the Commission on Human Rights at its fifty-second session.

3. Having in mind the report of the independent expert (E/CN.4/1997/89), the Commission, at its fifty-third session, adopted resolution 1997/52, subsequently endorsed by decision 1997/262 of the Economic and Social Council, in which the Commission invited the independent expert to inform the General Assembly at its fifty-second session and the Commission on Human Rights at its fifty-fourth session about the development of the human rights situation in Haiti.

4. At its fifty-first session, the General Assembly, by its resolution 51/110, after welcoming the improvements in the situation of human rights in Haiti, took note of the report of the independent expert (E/CN.4/1996/94). The Assembly also welcomed the establishment by the Centre for Human Rights of a programme of technical cooperation aimed at strengthening institutional capacity in Haiti in the field of human rights, and requested the Secretary-General to submit a report on the implementation of that programme to the General Assembly at its fifty-second session (see A/52/515).

5. This report contains the information requested and the recommendations made by the independent expert following his mission to Haiti, which took place from 28 August to 5 September 1997. He had meetings with many people, including Mr. René Préval, President of the Republic; Mr. Jean-Bertrand Aristide, former President of the Republic; Mr. Fritz Longchamp, Minister for Foreign Affairs; Mr. Pierre Max Antoine, Minister of Justice; Mr. Edgar Leblanc, President of the Senate and of the National Assembly; Mr. Gérard Pierre Charles, leader of the Organisation Politique Lavalas (OPL); and Mrs. Claudette Werleigh, former Prime Minister. The independent expert wishes to express his gratitude to the Haitian authorities for their constructive cooperation.

6. He was also able to have very fruitful talks with Mr. Rodolfo Matarollo, an eminent jurist and Deputy Executive Director of the International Civilian Mission in Haiti (MICIVIH); Mr. Franzoni, Deputy Resident Representative of the United Nations Development Programme (UNDP); representatives of various

international agencies and of several donor countries; the coordinator and members of the National Preparatory Commission for the Reform of Justice; representatives of non-governmental organizations, including in particular the Plate-forme des organisations haïtiennes des droits de l'homme, the Fondation Aristide pour la démocratie, and the National Coalition for Human Rights in Haiti. He visited the Palais de Justice and the Aquin prison and also went to Les Cayes and the rural areas in the south where he met with some of the peasants.

II. THE SOCIAL AND POLITICAL CONTEXT

7. The deterioration in economic and social conditions, the deterioration in the political situation, the strike at TELECO and the State University Hospital of Haiti, the allegations of ill-treatment or acts of torture committed by the police, the new wave of acts of violence, the overcrowding in the National Penitentiary, the rise in the cost of certain essential foodstuffs and the weaknesses of the judicial system are a source of concern for the future of human rights in Haiti.

8. This picture is made all the gloomier by the divisions within the Lavalas movement, not to mention the open conflict between OPL and Fanmi Lavalas. This conflict has been exacerbated by the crisis which followed the senatorial and local elections of 6 April 1997, which are reported to have been marred by many irregularities. In the view of certain observers, there were massive instances of fraud, but the major question remains the partiality of the Provisional Electoral Council which is denounced by political activists, in particular OPL.

9. Since the return of Aristide, enormous progress has been achieved in establishing the institutional bases of democracy, even though the political culture has not evolved to any great extent. It will take at least a generation to change the perceptions, behaviour, fears and suspicions. Efforts are, of course, still being made by President Préval to face up to the challenges of the restoration of Haitian justice, public security and the fight against poverty.

10. However, success will be guaranteed only if, at the same time, steps are taken to implant a democratic culture, a culture of tolerance. That is a long-term task, to be achieved through education. Only education will be able to put an end to the exploitation of the deprived masses who are subjected to arbitrary authority.

11. One has only to visit the shanty towns of Port-au-Prince or the remote areas to be aware of the vast gap between all the values which the international community is seeking to spread throughout the world and the daily life of the mass of the disinherited and the predatory practices of the majority of the minority in power. It is therefore important to curb the tendency to reduce democracy to its purely electoral dimension, with the attendant consequence of what some would describe as a government - or institutional - crisis.

12. How many Haitians participated in the April 1997 elections? Barely 10 per cent of the voters went to the polls, the rest having preferred to send a signal which was interpreted as being a refusal to participate in a duel within

a political class which aspired to power. Haiti is suffering from a lack of leadership in many sectors and the authority of the State is not able to assert itself. There is an urgent need to resolve the problems of governance, even though it is encouraging to note that most of the ministers of the outgoing Government are working without respite.

13. For the first time, the continuity of the State can be seen. At the time of the resignation of the Prime Minister, Rosny Smarth, on 8 June 1997, fears were expressed that the country was going to fall into chaos. That did not occur, but the sooner a Prime Minister is appointed the better.

III. THE RIGHT TO HEALTH

14. Articles 19 and 23 of the Haitian Constitution provide, respectively, that:

> "The State has a pressing obligation to guarantee the right to life, to health and to respect for the human person of all citizens without distinction, in accordance with the Universal Declaration of Human Rights"; ... "The State is bound by an obligation to ensure that all citizens in all territorial communities have the appropriate facilities to guarantee the protection, maintenance and restoration of their health by establishing hospitals, health centres and clinics."

The picture offered by the reality in Haiti, however, calls for the adoption of the strongest measures to make those constitutional rights effective.

15. The Haitian population is, in fact, far from having access to health services in optimal conditions. The country has only 5,696 beds, or one bed for every 1,144 inhabitants. The medical personnel in the public sector consists of 773 doctors, 785 nurses and 1,844 nurse's aides, or medical coverage of one doctor for every 8,428 inhabitants, one licensed nurse for every 8,299 inhabitants, and one nurse's aide for every 3,533 inhabitants.

16. As reported to the Commission on Human Rights (E/CN.4/1997/89), health coverage is concentrated in the Département de l'Ouest, particularly in the metropolitan area, which has 70 per cent of the doctors, 50 per cent of the dentists and 60 per cent of the nurses, whereas 70 per cent of the population lives in the rural areas. This concentration is reflected in a considerable cost (in terms of travel, time and queues), in particular to the rural population, with the result that there is little access for the population as a whole to the public health services (medical personnel, facilities and drugs).

17. In order to expand the access of the population to drugs, the cost of which is fairly high, the Ministry of Public Health and non-governmental organizations have, with the support of donors, established a system for the sale of generic essential drugs at cost price in their various facilities. It appears that there is a real determination to organize the health system and to provide the population with services.

18. Thus, several draft legislative acts are being finalized. These include the Organic Act of the Ministry of Public Health, which should redefine the

structure of the Ministry and its functions at all levels; the Basic Act on hospitals, which will organize the public health system and institute the recovery of costs; and, lastly, the Basic Act on drugs, which is concerned with making essential drugs available to the population and regulating the import and manufacture of pharmaceutical products and their distribution to the public through private channels. This latter Basic Act will make it possible to avoid in the future tragedies such as that of the deaths of almost 80 Haitian children caused by a toxic substance, diethylene glycol, in syrups manufactured by PHARVAL, a Haitian laboratory.

19. Whatever the importance of the institutional and regulatory framework, however, the expected results might be meagre unless adequate financial resources are allocated to the public health sector. For the financial year 1996-1997, the estimated overall expenditure amounts to 3 billion gourdes, or approximately 403 gourdes ($27) per inhabitant. It should be noted that, for the financial year 1995, it amounted to $26 per inhabitant, and for the financial year 1996 to $24 per inhabitant, which represented respectively 8 per cent and 6 per cent of GDP. Taking into account inflation, there is a reduction of 42 per cent in real terms, even though there has been a nominal progression of almost 270 per cent over this period.

20. The State has unquestionably made a particular effort to improve the public health sector, but there is still an enormous amount to be done. Above all, health coverage should be extended to outlying areas, but the State University Hospital of Haiti, whose personnel, in particular the interns and residents, are demanding better working conditions, should not be neglected. By means of an efficient policy of decentralization, it should be possible to relieve that hospital so that it can play its role as a university hospital resource. Health should remain a priority sector for the Haitian authorities.

21. As Mr. Asbjørn Eide, a member of the Subcommission on Prevention of Discrimination and Protection of Minorities rightly noted, the obligation of States to protect and promote economic, social and cultural rights involves three aspects: (1) the obligation to respect: the State should not violate the integrity of the individual or infringe on his or her freedom to use material resources to satisfy basic needs; (2) the obligation to protect: to prevent others from violating the right; (3) the obligation to fulfil: the necessity for the State to take measures to ensure the right.

22. With regard, specifically, to the right to health, this right is recognized in article 12, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, which states: "The States Parties to the present Convention recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The steps to be taken to achieve the full realization of this right to health are enumerated in article 12, paragraph 2. They include:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

23. Obviously, the general nature of these steps makes it difficult to establish specific obligations. It might therefore be appropriate, as Virginia A. Leary and other experts have suggested, to draw inspiration from the work of the World Health Organization to establish more specific means of reducing infant mortality, improving environmental hygiene, ensuring the prevention of epidemic and other diseases, and creating conditions which would assure everyone access to medical attention. Special attention should also be paid to the provision of access to drinking water and drainage disposal in order to achieve the realization of the right to health.

24. As Virginia A. Leary has pointed out, "... no person or State or organization can guarantee good health - but the concept of health as a human right emphasizes the social and ethical aspects of health care and health status and stresses that, like other rights, individuals may legitimately protest the denial of the right". It is true that the realization of the rights proclaimed in the International Covenant on Economic, Social and Cultural Rights will be achieved progressively and to the maximum of the available resources (article 2 of the Covenant).

25. The Committee on Economic, Social and Cultural Rights took care to interpret "progressive realization" as an obligation of States to move expeditiously and effectively towards the goal of ensuring the full realization of fundamental rights. It is useful to refer to the Committee's general comment No. 3 (1990) on the question:

> "The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time ... It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant, which is to establish clear obligations for States parties in respect of the full realization of the rights in question."

However, the concept of progressiveness should by no means be used to justify non-compliance with an obligation under the Covenant. While Haiti has not yet ratified the International Covenant on Economic, Social and Cultural Rights, there is no doubt that the effective enjoyment of these rights by the population, particularly the poorest segment of the population, is one of President Préval's priorities.

26. The enormous difficulties facing the country are the result of military and civilian dictatorships that for decades abused political and economic power. During those long years of dictatorship, when thousands of Haitians laid down

their lives for the freedom of future generations, enjoyment of the right to health was far from being a reality. Owing to the denial of civil rights and the failure to involve the population in public affairs, political activity was sharply curtailed and was dominated by an economic elite that had concentrated the country's wealth in its hands.

27. As stated in the Limburg Principles, the violation of economic, social and cultural rights undermines true national security and may jeopardize international peace and security. A State responsible for such violation cannot invoke national security as a justification for measures aimed at suppressing opposition to such violation, or at perpetrating repressive practices against its population. The independent expert strongly urges the Ministry of Public Health to implement the recommendations formulated within the framework of the strategy and plan of action in the health sector that were proposed by a team of experts (Françoise André, a consultant for the European Union, and Juan Buttari, a specialist for the United States Agency for International Development). The main objective of these recommendations is to strengthen the effectiveness and equitable use of the resources available in the public sector in order to provide better services to the entire population:

(a) The Ministry of Public Health must receive support in managing public funds in order to ensure a more efficient and effective use of such funds (strengthening of management, supervision, follow-up, organization of upkeep and maintenance, short-term financial programming and so on);

(b) The Ministry of Public Health should provide better information on the resources available to health-care facilities and should ensure that such resources are managed in such a way as to improve the administration of hospitals in order to provide better service, and this should be done even before the institution of a cost-recovery policy. In this regard, the specific function of each type of health-care facility (basic health-care services, effective role of the State University Hospital of Haiti) must be redefined, and measures must be taken to reconcile the purpose of the facilities and their effective role (development of secondary hospitals, refocusing of the activities of the State University Hospital of Haiti); the granting of autonomy to the State University Hospital of Haiti, and also to regional hospitals, should promote better management of the sector's resources;

(c) Administration and management of staff should be improved (effective information about staff, monitoring of movements, administrative measures to curb absenteeism and also to deal with the refusal to take up assigned posts);

(d) Staff must be distributed as well as possible, bearing in mind current and future strength and priorities ("the right person in the right place") in order to ensure the public sector's maximum effectiveness (through redeployment or at the time of recruitment); medium- and long-term plans should be formulated to facilitate this process: staff policy, career planning, incentives, training and so on; however, the wage bill should remain "sustainable" within the overall budget;

(e) Existing resources should be effectively redistributed to outlying districts in accordance with policies aimed at ensuring greater equity;

(f) Real progress in cost-effective programming should be made in order to facilitate the implementation of specific policies and to prioritize oojectives bearing in mind existing conditions; such programming should be adequately documented and explicit, and all existing or planned measures and any related needs (recurrent costs) as well as the income of public facilities must be taken into account;

(g) More efficient use should be made of available resources in order to ensure provision of quality health care to the entire population, in particular the most remote and destitute groups.

28. These recommendations also seek to strengthen coordination among participants in order to provide the population with effective health-care services throughout the entire country:

(a) A real partnership, instead of mere coordination, with the non-profit sector should be established in order to draw on existing positive experience (this partnership already exists at the health centre level); conversely, the Ministry of Public Health should issue permits or accreditation to non-governmental organizations active in the sector;

(b) A kind of operational partnership is expanding through the conclusion of contracts or conventions: certain contracts or conventions serve to strengthen the public sector's role in providing quality health care to the population through non-governmental organizations active in the public sector or non-governmental organizations that coordinate specific activities (tuberculosis and sexually transmitted diseases/AIDS programme); this type of partnership should be developed;

(c) Similarly, the development of a network of specialized services (laboratories, special examinations and so on) should be encouraged, particularly in the metropolitan area;

(d) Coordination between donors (and other contributors) and the Ministry should be strengthened not only at the level of activities but also at the level of available resources, predictable disbursements and probable recurrent costs (staff, operations and so on) with a view to providing the information necessary to improve programming.

29. The Ministry of Public Health should play a regulatory role in various areas in direct contact with the sector in order to increase the availability of quality services to the population. In the area of medicines, it is first of all necessary to enact regulations and control imports or the manufacture of products and the distribution of products in dispensaries (permission to open and inspect).

30. On the other hand, the Ministry should take part in training health personnel by granting accreditations based on the degree programme for private schools (doctors, nurses, aides, technicians and so on), and even institute State examinations in order to ensure that those who have completed their training have attained the necessary level of competence. Moreover, it is advisable to adopt regulations on the opening of private practices and to grant

the relevant accreditation. The Ministry should also be given the necessary means to ensure observance of the legislation or regulations to be adopted.

31. In any case, there is an urgent need for a concerted effort throughout the country to ensure that all elements of civil society are involved in the progressive realization of economic and social rights, which should place special emphasis on the right to health and the right to education.

IV. THE RIGHT TO EDUCATION

32. Although the Haitian Constitution devotes 14 articles to education, the educational system has been widely discredited, not only because of its poor quality but also because it is beyond the reach of many children. The high illiteracy rate (about 80 per cent) is one of the most urgent problems that must be solved, particularly in view of the relationship between education and development. Aware of this, the Ministry of National Education organized a national dialogue, which received donor support.

33. The discussions resulting from this meeting served as the basis for the Ministry's formulation of a national education and training plan and helped to establish certain priorities, which include improvement of the quality of basic education, increased access to basic education, improvement of the system's external effectiveness and the strengthening of the Ministry's planning and management capacity. Specifically, the Ministry must enhance the status of teachers, and improve continuing education and initial training; build schools in poverty-stricken areas; subsidize community schools; increase the capacity of technical and vocational schools; and enhance pedagogical management.

34. It is important to point out that, as early as 1988, an act was adopted with a view to improving the quality of basic education. Known as the 1988 Bernard Act, it introduced a reform of the structure, programmes and evaluation of basic education. Moreover, the Act instituted the compulsory use of Creole as a language of instruction and a means of acquiring practical and useful knowledge. Unfortunately, the implementation of this reform was impaired by the frequent changes of government and a lack of support from foreign investors.

35. It is also unfortunate that the reform was not introduced into private education because of failure to reach agreement on the use of Creole as a language of instruction. This is all the more regrettable since most of those attending school are enrolled in the non-public sector: 66 per cent in primary schools, 81 per cent in secondary schools and 50 per cent in tertiary schools, and monitoring of this sector is generally limited. The State University of Haiti has for the time being been placed under the Ministry of National Education, pending the adoption of an act proclaiming its autonomy. The University accounts for 85 per cent of enrolment in public higher education institutions and 50 per cent of enrolment in higher educational institutions as a whole.

36. A problem that should be finally resolved is the payment of back wages owed to reinstated teachers who had been wrongly dismissed, salary increases in response to social pressure, and so on. Today, Haiti devotes between

8.5 per cent and 12 per cent of its gross domestic product to education. Nevertheless, it is necessary to point out that non-governmental organizations and parents make substantial contributions to education, although their financial support is used to cover operational costs (tuition, purchase of books, examination fees, uniforms and so on) rather than investment costs.

37. According to a survey conducted in 1995 by Simon Fass of the Research Triangle Institute, parents contributed an average of 507 gourdes per child for direct school fees in 1991 (843 gourdes in urban areas and 377 in rural areas). On average, Haitian households spend from 11 to 13 per cent of their income on education (as opposed to 3 to 4 per cent in other low-income countries). Indicators of the educational system that deserve mention include access, enrolment by sex and the flow model. With regard to access to primary education, the overall enrolment rate rose from 69 per cent in 1985 to 75 per cent in 1990 and 90 per cent in 1995. At the secondary level, the rate rose from 21 to 28 per cent between 1990 and 1995. This demonstrates clearly that there is a great demand for primary education. With regard to the proportion of enrolled girls, there does not seem to be a serious discrimination problem with respect to primary-level girls, since they represent 48.2 per cent of total enrolment and 49.6 per cent of children in this age bracket. Finally, of every 1,000 pupils who begin primary education, 288 (of whom only 131 are held back a year) go on to secondary education. Of these 288 students, 164 complete the first cycle (third basic cycle or first secondary cycle) and 38 will complete the second cycle and receive a baccalauréat in philosophy and qualify for admission to higher educational institutions.

V. PARTICIPATION IN DEVELOPMENT

38. People are dissatisfied, and they will need to be satisfied fairly rapidly if they are not to be manipulated by demagogues. In order to be satisfied, they must have access to safe drinking water, wind energy and improved living conditions, which should result from an extensive grass-roots development programme on which it is possible to achieve consensus. Small projects that have been carefully studied at the local level would thus be launched with the participation of the people concerned, who would take charge of their own development. What is involved is a participatory approach which brings together local authorities, popularly elected representatives and civil society. This approach does not, of course, preclude large projects; a combination of the two is needed.

39. As a first step, however, it is necessary to seek increased opportunities for dialogue and put aside the tradition of social polarization. A culture of democratic tolerance does not yet exist; however, practical experience with democracy will pave the way for depolarization. It is time to put aside an all-or-nothing approach. President Préval reaffirmed the meaning of the commitment to the Haitian people which he declared in accepting the presidency: "Modernizing the country in the interests of the Haitian people ... rapidly improving the living conditions of the Haitian people". Fulfilling such a commitment nowadays is contingent on the reforms being carried out and on the realization by all and sundry, particularly those who proclaim their allegiance

to an anti-neo-liberal current, that Haiti cannot break out of its stalemate in an atmosphere of permanent confrontation.

40. President Préval is therefore determined to modernize State enterprises by opening them up to private investors, both local and foreign. He reaffirmed this by stating: "There are a number of enterprises, such as Électricité d'Haïti, TELECO, La Minoterie, Ciment d'Haiti (these last two are closed), and the Autorité Portuaire Nationale (APN), the most expensive port in the entire region ... What are we proposing with respect to 'privatization'? First of all, we are proposing that the Haitian State should remain the owner of these enterprises. Next, we envisage three types of 'modernization'; in all three cases, the State would not cede any part of the public domain. These are: (1) an enterprise management contract; (2) a concession; (3) a partnership ... or mixed-capital enterprise (private sector/State)."

41. Nearly 30 years of Duvalierist absolute power have shaped attitudes. There was a tendency to criticize everything that the Duvaliers did as being contrary to the interests of the Haitian nation. The context is different now, since those in power are men and women who do not have the financial resources to satisfy the people's aspirations, but who should endeavour to agree on what is most important, in other words, what unites them rather than divides them. In the light of the financial poverty of the Haitian State, which is unable to collect tax revenues, or the situation of the State enterprises, whose privatization is rejected and whose deficits are mounting at an alarming rate, what is to be done? Pursue the path of opposition and even confrontation, with the risk of exacerbating popular frustrations?

42. In any event, it should be remembered that it is the most disadvantaged who bear the consequences of an all-or-nothing attitude. Let us take, for example, Électricité d'Haïti. This enterprise collects barely 25 per cent of electricity charges; the remainder, $100 million, is borne by the taxpayers, for a daily ration which varies from six to eight hours. Hence a child in Cité-Soleil (a Port-au-Prince slum) who learns his lessons or does his homework under the public street lights is often forced to close his books and notebooks because of frequent power cuts. The consequence is that, among the disadvantaged, a more disadvantaged class is created which is at the extreme limit of deprivation. The feeling emerges that those who are opposed to privatization are acting in good faith; they are patriots who have the country's interests at heart, but who are ideologically incapable of forging a different perspective.

43. As Gérard Pierre-Charles, leader of OPL observed, quite correctly,

> "The historical phase which thus culminates in this renewal of the political and social system arises from a community's desire for change in the form of economic development; it also reflects the quest for well-being on the part of men, women and children in this community, as well as the search for a societal organization that can ensure participation, equality and justice for the people. The agenda of this renewal effort implies quite a number of transformations in the practices and ideas of this society. Democracy has aroused so much hope in people's lives that it will have to lead to the fulfilment of modest but tangible goals, in order to

bring the utopianism of this period into line with the powerful themes which it is likely to generate for the pursuit of human development goals."

VI. THE ELECTIONS

44. In an information note dated 5 May 1997, OPL stated that the elections held on 6 April and those held on 27 April at Pestel had been characterized by a systematic effort on the part of the electoral body to force the people to accept the official results. OPL believes that the entire operation was carried out with a view to achieving, at all costs, Lafanmi's goal of having nine Senate seats at its disposal. It therefore calls not only for cancellation of the elections, but also for the dismissal of the Provisional Electoral Council (CEP), which decided not to count blank ballots as part of the majority plus one percentage needed to determine the first-round winners.

45. While the debate was raging over what some have described as an electoral crisis, CEP had the final results of the elections for the communal section assemblies (ASEC) and the municipal delegates published in the official journal Le Moniteur. It should be noted that in the western part of the country, the members of three ASEC cartels in the commune of Léogane had already taken the oath of office at the Gressier magistrates' court. The same was true in the southern region, where over nine ASEC cartels had already taken the oath at different magistrates' courts. In the south-eastern region, 49 other ASEC cartels had officially assumed their duties after having been sworn in.

46. Another complaint against the electoral body was made in a press release issued by the resigning Prime Minister, Rosny Smarth: "The Provisional Electoral Council aims to mislead when it pretends to confuse the proclamation of the results, which is within its prerogatives, with publication in the journal Le Moniteur, which lies exclusively within the powers of the executive branch." The Secretary-General of CEP stated in reply: "What is at issue is not a decree-law or a law, but rather the proclamation of the results of the election of 6 April, as stated in Le Moniteur."

47. The major problem, however, remains the controversial question of the blank votes, which led the OPL legislators to introduce a draft law containing an interpretation of certain provisions of the Electoral Act of 1995, specifically articles 108 and 116. Article 108 states: "Only those votes shall be valid which are cast as blanks on ballot papers issued by CEP and those marked by a cross, an 'X' or any other sign indicating unambiguously the voter's intention to vote or his political will in the circle designated for that purpose." Article 116 states: "The Provisional Electoral Council, after receiving the records of the vote tally from the departmental electoral offices and settling any disputes, shall proclaim the final results of the elections based on percentages derived solely from valid votes."

48. The draft text submitted by the legislators, which was adopted by the Chamber of Deputies pending a vote in the Senate, gives the following interpretation:

"In determining the percentage, only valid votes shall be taken into account, as provided in article 116 of the Electoral Act" (article 3 of the draft);

"The concept of a valid vote is defined unambiguously in article 108 of the Electoral Act. Article 108 defines a valid vote as one cast as a blank on a ballot paper issued by CEP and one marked by a cross, an 'X' or any other sign indicating unambiguously the voter's intention to vote or his political will in the circle designated for that purpose" (article 4 of the draft).

49. The debate then shifted to the legal terrain. First of all, therefore, information is needed on CEP, which was established by article 1 of the Electoral Act of February 1995: "The Provisional Electoral Council shall be an independent public institution responsible for organizing and supervising elections. It shall enjoy administrative autonomy; it shall also be responsible for settling any disputes arising in connection with the elections or the application or violation of the electoral laws, subject to any legal proceedings instituted against the person or persons responsible before the courts having jurisdiction in the matter."

50. The Council is accused, in particular, of having proclaimed the results of the elections without first resolving the challenges raised by candidates of various political stripes, and of having excluded blank votes from the final calculation of percentages. Did CEP violate the electoral laws through its interpretation of the blank-votes issue? What is the penalty for this violation? Is CEP the sole administrator of the electoral process, from organization to the proclamation of the final results? Can CEP be dissolved? On what grounds and by what authority? Was there a systematic attempt to document the massive irregularities and fraud which allegedly characterized these elections? If so, what procedure should be initiated to redress these abuses? Did the candidates and parties that were victims of the violations ascribed to CEP have the opportunity to refer their complaints to the Court of Cassation? Could the Chamber of Deputies be seized of the matter on the basis of a complaint, bring charges and request the Senate to set itself up as a High Court of Justice in order to render a decision? What risk does the electoral issue pose to the institutionalization of democracy and the rule of law in Haiti? What threats loom over respect for civil and political rights and the effective enjoyment of economic, social and cultural rights?

VII. THE GOVERNMENTAL "CRISIS"

51. Haiti is seeking a prime minister after the refusal by Parliament to endorse President Préval's choice of one Eric Pierre, a Haitian technocrat held in high esteem by the international financial institutions. It may be that the consultations held with a view to achieving consensus did not take into account the political line-up in the two legislative chambers; it may be that certain political parties are unwilling to make concessions for fear of jeopardizing the values which they uphold; or it may be that Haiti is the victim of the framers of its Constitution, who wanted to define everything precisely in order to address every situation, so that the general and the particular are mingled, as

are the permanent and the incidental. The fact remains that the vote in Parliament rejecting President Préval's proposal reflects a feeling of discomfort. As stated in article 137 of the Constitution: "The President of the Republic shall choose a prime minister from among the members of the party having a majority in Parliament. In the absence of a majority, the President of the Republic shall choose his prime minister in consultation with the President of the Senate and the President of the Chamber of Deputies. In either case, the choice shall be ratified by Parliament."

52. Nevertheless, this constitutional provision gave rise to a debate over the definition of a majority. Did it refer to the party having an absolute majority? Otherwise, if a party had a relative majority, would it not be required to form a coalition with one or more other parties in order to be assured of having an absolute majority? Is this a real or a false debate? In this young Haitian democracy, the most important thing should be to take into account the political line-up in the two chambers, so that the President's choice will win the approval of Parliament.

53. In order to facilitate the appointment of the future prime minister, what is needed is a consultation which goes beyond this debate, making it possible to achieve consensus on the high cost of living, the political programme, public security, political pluralism. It is necessary to seek the opinion of all leaders and avoid exclusion, which causes problems. It should never be forgotten that the present generation in Haiti has always been in the opposition, and that the country is still suffering from a structural weakness and a lack of human and financial resources. As a result, these men and women have stepped forward at a time when democracy, in order to flourish, requires a solid legal framework with institutions that function and are respected. There is a need to give priority to dialogue and to encourage openness without demagogy.

54. It is important, for instance, for Haitians to find a common approach to privatization cases, for the international community to strengthen its support and for the international financial institutions to show greater understanding. In a similar vein, attention should be drawn to the fact that the issues surrounding the elections and the appointment of the prime minister can be resolved only through an institutional and systemic approach. In the short term, attention must be paid to the demands of the vast majority of the population for food, housing, health care and education, and the demands of the business community for a stable environment, banking reforms, access to credit and protection of Haitian producers (even taking globalization into account).

55. To achieve this, it is essential for Haiti to reorganize the public administration and State enterprises. The latter are in difficulty because the State does not have the resources to make them profitable. Some of the conclusions outlined at the fifty-third session of the Commission on Human Rights are still valid. Now as in the past, the task confronting the Haitian authorities with regard to the extreme poverty of the masses is immense, since, while the State is the main employer, all new recruitment is frozen and there are not enough resources for large projects. Moreover, it should not be forgotten that while large projects generate jobs and economic growth, they

require a minimum of good governance, which does not yet exist - hence the stalemate.

VIII. INTERNATIONAL COOPERATION

56. It is essential for the international community to strengthen its programmes of cooperation to foster democracy and support the promotion and protection of human rights. This involves programmes and activities focusing on the modernization of the State apparatus; programmes and activities designed to strengthen civil society; and programmes and activities designed to promote economic reforms and growth so as to ensure the durability of the reform process and democratization. It is regrettable to note that international assistance is very disorganized, just like Haiti itself. There are a great many initiatives but they are paralysed, in particular, by the shortage of managerial staff in the Haitian administration.

57. It should be stressed that when too much is offered to a Ministry which lacks adequate human resources for proper programme implementation, the result is to disrupt the work of the few managers available in that Ministry. Some of these managers spend over 70 per cent of their time at meetings with donors and others. These donors would therefore do well to coordinate their support more fully. To take the example of reform of the judiciary, there is a lack of coordination of the various segments of the United Nations in this sphere. It is hardly surprising, then, that public opinion reproaches the international community for spending astronomical sums with a barely perceptible impact among the underprivileged masses.

58. Hence the comment by an expert from the United Nations Centre for Human Rights that one segment of public opinion is inclined to see these groups (the United Nations Support Mission in Haiti (UNSMIH) and MICIVIH) as "occupying forces", and another segment sees them as forces which have no interest in the maintenance of public order. And yet, according to UNDP, support from the international community has increased from 21 dollars per inhabitant at the beginning of the decade to 75 dollars in 1995 and 57 dollars in 1996, in other words five times as much as the aid received for the countries of the south (an average of 11 dollars per inhabitant). That is why it is desirable to develop a communication policy which would help to enlighten the Haitian people about the foreign presence, and also about modernization of the State.

59. This concept of modernization of the State concerns the improvement of the State apparatus so that its operation becomes clearer and more accessible, decisions and resource utilization are more transparent, and the powers of the State over citizens are appropriately defined and clearly circumscribed. For such conditions to prevail, precise administrative and financial rules will clearly be needed, but also an overhaul of the civil service. Through this overhaul, it will certainly be possible to provide the ministerial departments with competent managerial staff who are concerned about their country.

60. More support will need to be given to the organizations of civil society, since one of the essential characteristics of democracy is the deconcentration of power, both political and economic, within society. Already, non-governmental organizations for the promotion and protection of human rights and grass-roots organizations are playing a fairly significant role, which could be enhanced if they were better provided with logistic and financial resources. A strong Haitian civil society - that is to say, one that is clearly differentiated from State institutions - is now essential to provide the people with a power which can counterbalance the power of the State, thereby guaranteeing the essential conditions of democracy.

61. In this regard, the Centre for Human Rights has taken the constructive initiative of establishing a segment for human rights education, involving non-governmental organizations and therefore able to make a valuable contribution to progress towards democratic forms of public administration, as well as the emergence of democratic institutions at the level of grass-roots communities. Under this initiative, the Centre will organize a training seminar before the end of 1997, in cooperation with the Ministry of Justice, for some 50 regional delegates designated by parliamentarians and some 50 representatives of non-governmental organizations. The objectives of the cooperation of the Centre for Human Rights are to:

(a) Strengthen the capacities of political and para-political structures in the area of human rights and publicize these rights through grass-roots communities;

(b) Incorporate international human rights standards in the Penal Code and the Code of Criminal Investigation;

(c) Consolidate the institutional capacities of civil society to protect human rights in a democratic society.

IX. THE PRISONS

62. With significant support from UNDP, improvements have been made in penitentiary institutions. Despite these improvements, the situation is still fragile and there is always a risk of slipping back into the shortcomings of the past, in particular arbitrary actions in such institutions. In order to safeguard what has been achieved and pursue the process of prison reform in a harmonious manner, the Haitian State must continue to show a strong and unflinching will in the management of a prison administration which respects standards. The Haitian State must also succeed in integrating the National Penitentiary Administration (APENA) into the police force, while retaining its special characteristics.

63. In order to achieve this, the operation of APENA will need to be organized in such a way that it is not weakened within the police force and the statute of prison personnel must be clearly defined. It is regrettable that at the level of the central administration, the management methods for prison administration are not yet properly assimilated. Follow-up leaves much to be desired. There has been a great deal of investment in the national penitentiary, but

unfortunately there is a high level of negligence, a situation which probably derives from the lack of experience of the Director, who has not been able to impose his authority. It would be no exaggeration to say that, to some extent, the prison is run by the prisoners themselves.

64. The system of majors has been confirmed by MICIVIH, which recognizes that this system has repercussions on the treatment of detainees and respect for their rights. MICIVIH describes the major as a prisoner who is considered as the chief of the cell and enjoys a position of confidence with the prison administration. Citing the example of the national penitentiary, MICIVIH notes that the major actually holds the keys to the cell during the day. It is he who opens the door to enable detainees to go to the toilets or have medical consultations at the infirmary. He also distributes food to the prisoners in his cell.

65. This delegated authority, which is often obtained through violence within the cell, is the source of many abuses and much arbitrary treatment violating the fundamental rights of the detainees (health, hygiene and food). In conclusion, MICIVIH recognizes that this system is all the more pernicious in that APENA officers leave it to the majors to maintain order; the staff of detention centres justify this situation by the lack of personnel, but in reality the "powers" entrusted to the majors protect the prison officers from delicate situations. The number of detainees has risen to 1,370, but at the same time the number of prison officers has declined.

66. While living conditions in the prisons have improved, they remain well below the level required by the Standard Minimum Rules for the Treatment of Prisoners approved by the Economic and Social Council in resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. In its report on the prisons, issued in July 1997, MICIVIH recognizes that the Haitian prisons are faced with the twin challenge of respecting human rights and the principles of the rule of law on the one hand, and adapting to trends in delinquency and crime on the other.

67. There is also a problem of escapes from the prisons, some of which were allegedly made possible by the complicity of prison officers. However, APENA has taken disciplinary measures in some cases, even to the point of dismissal. It is regrettable, however, that the prison officers concerned are rarely prosecuted. A notorious escape was that of Wilbert Morisseau, who had been imprisoned on several counts of human rights violations, including the case of the Raboteau massacre. He allegedly escaped on 21 March 1997 at a judicial hearing in the civil court at Gonaïves. The APENA officers who were guarding him were placed under detention and then released on 26 June 1997 and therefore struck off the lists.

68. MICIVIH has drawn attention to a question which is of concern to many human rights activists, namely that of the risks incurred when entrusting prison management and the supervision of prisoners to former soldiers. MICIVIH questions whether it is possible to entrust these persons with prison security and be assured of their loyalty so as to prevent and avoid further escapes, particularly of officers of the de facto regime accused of human rights violations.

69. The problem of prison overcrowding has still not been solved. This will remain the case until the shortcomings in the judicial system are remedied in the context of the reform of justice. As has been very correctly pointed out by Mr. Rodolfo Matarollo, deputy executive director of MICIVIH, until justice is able to respond more effectively to the criminal phenomenon, the situation in the prisons is liable to remain critical and security difficult to assure.

70. In all the Haitian prisons, the large majority of the prison population (over 80 per cent) comprises persons in pre-trial detention, forgotten behind bars, many of whom were imprisoned for acts which do not constitute punishable offences. Had it not been for the UNDP prison reform project, the conditions of the prisoners would have been even more inhumane, as in 1993 when MICIVIH described prison conditions in these terms: "The conditions of detention found by the Mission were deplorable. In many cases there was gross overcrowding of prisoners in cells, even where additional accommodation was available. Sanitary conditions were appalling. The budget provided to the Armed Forces of Haiti for prisoners is seriously inadequate, but in any event little of it seems to be applied for their needs: in general, prisoners received only food brought by their families. Routine beatings were reported, and some prisoners were said to have been subjected to deliberately cruel conditions as a disciplinary measure. Several prisoners were found in an advanced state of malnutrition. Many prisoners required but were not receiving medical treatment, in many cases for injuries they said they had suffered as a result of beatings in detention. In several cases the Mission arranged for prisoners to be transferred to hospital, released for medical treatment or treated in detention. The Mission was informed of a number of deaths as a result of such conditions."

71. Since then, the Ministry of Justice has made commendable efforts regarding access to food and medical care for prisoners. Much still remains to be done, however, with regard to the prison regime and the rights of prisoners, and with regard to criminal and prison policy, on the basis of the relevant recommendations of MICIVIH, namely to:

(a) Ensure, as far as possible, the separation of the different categories of prisoners, especially the separation of minors from adults;

(b) Establish a partnership with the Ministry of Health in order to provide medical care for prisoners, organize medical examinations for prisoners upon admission to prison and ensure that regular medical examinations are carried out;

(c) Eliminate the system of majors that prevails in the prisons, so that no prisoner carries out disciplinary functions;

(d) Establish specialized institutions for juvenile offenders, providing treatment in open or semi-open settings, in accordance with the provisions of the Penal Code, the Convention on the Rights of the Child, ratified by Haiti, and the applicable United Nations regulations;

(e) Establish a system for the rehabilitation of offenders with the aim of giving them the necessary skills and motivation to live in a law-abiding and autonomous manner after their release;

(f) Organize post-release assistance and reintegration into society, taking into account, from the beginning of the sentence, the future of the detainee after his release. With respect to convicted juveniles, special efforts must be made to facilitate their return to their families, an educational programme or the workforce;

(g) Address the issue of prisons in the wider context of the prevention of crime and treatment of offenders, which calls for a multidisciplinary approach to criminality and the responses thereto (social actors, community network, institutions responsible, in particular, for education, health, youth, the economy, the police, and judicial and penitentiary institutions); in this respect, it would be useful to organize a first day of reflection on this subject with all the actors concerned;

(h) Envisage the formu ation of non-custodial measures with the aim of harmonizing the penal system with modern trends and limiting the overcrowding of prisons (economic and monetary penalties, restitution or compensation to the victim when possible, community work, educational measures, etc.) taking into account local realities and the personal situation of the detainees (such as the lack of a fixed residence or domicile, being insolvent, etc.);

(i) Continue efforts to improve the management of parquets and courts so as to ensure continuity of the criminal chain and accelerate the course of justice;

(j) Ensure the presence of a legal assistant in all penitentiary centres;

(k) Set up a small library of legal works and documents. The library should contain the essential material for the work of the legal assistant, that is to say the Constitution of the Republic, the Code of Criminal Procedure, the Penal Code, and all APENA texts, along with international instruments ratified by Haiti such as the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the Convention on the Rights of the Child.

72. In the Commission on Human Rights, the independent expert welcomed the initiative of President Préval who, following his visit to the national penitentiary, decided to establish an advisory commission to alleviate delays in criminal justice (established by presidential decree on 8 November 1996) in order to help solve the problem of overcrowding in penitentiary institutions, particularly the national penitentiary.

73. The Commission had the mandate of formulating recommendations on all the cases of prisoners awaiting trial for cases involving correctional courts or simple police matters. At the conclusion of its work, it submitted a report in which it described its activities and shared its observations. Short- and medium-term general recommendations were also made. These have begun to be implemented by the Ministry of Justice, and should be given even greater support by the international community.

X. THE JUDICIAL SYSTEM

74. The Chamber of Deputies considered and on 2 September 1997 adopted the draft law on judicial reform. The representatives of the people believe that it is the State's duty to adopt the measures needed for the administration of sound and impartial justice, that the people's legitimate demands require an in-depth reform of the judicial system and that the judicial branch is an essential foundation of the organization of the State. They further believe that it is incumbent upon the State to apply the Constitution and the law, safeguard human rights, respect and ensure respect for the relevant international conventions ratified by Haiti, and combat impunity by punishing the perpetrators both of offences under the ordinary law and of human rights violations.

75. Introducing the report of the Justice Commission of the Chamber, its Chairman, Deputy Jasmin Joseph, indicated that the draft law included special provisions covering crimes committed before and during the period of the coup d'état of September 1991 and machinery for prosecution, and reflected the consensus of the Government and the two houses of Parliament. The provisions in question are contained in articles 6 to 8 (special provisions), as follows:

> "Article 6 - A special commission composed of magistrates shall be responsible for investigating crimes and offences committed during the period of the coup d'état and the various massacres perpetrated in the country and for bringing the alleged perpetrators and their accomplices to justice.
>
> Article 7 - There is and shall be no period of limitation for crimes and offences committed during the period from 30 September 1991 to 15 October 1994.
>
> Article 8 - The State undertakes, pursuant to the decree of 29 September 1995, to provide assistance to persons identified as victims of the crimes and offences referred to in the preceding article."

76. These three articles represent a response to the popular demand that everything possible should be done to punish the perpetrators of human rights violations who have thus far slipped through the net of justice. There have in fact been several criminal trials where the accused were acquitted because the prosecution could not provide proof of their guilt or convince the jury to convict.

77. The result is that the people and the non-governmental organizations have given voice to frustration because notorious accused persons were tried and acquitted. Yet as the saying goes, it is better to acquit a guilty person than condemn an innocent person. Suspicions are not enough. Proof of guilt must be established. As MICIVIH observed, in most cases there was not the least shred of evidence. Cases have been initiated but the weakness of the criminal investigations that were conducted is simply scandalous.

78. President Préval is fully aware of this and his determination to combat impunity is beyond doubt. In the course of two weeks, he presided over five meetings on the question, attended by the Minister of Justice, former members of

the National Commission of Truth and Justice, the Coordinator of the National Preparatory Commission for the Reform of Justice, some jurists and a representative of MICIVIH. He gave clear, firm instructions to the Minister of Justice that the cases involving impunity must be settled rapidly but without sacrificing human rights standards, especially the right to due process and full and constant respect for the rights of the defence.

79. Without hesitating to prosecute where violations have occurred, care must nevertheless be taken to identify the cases where there is evidence, reliable testimony or serious and concordant circumstantial evidence. Accordingly, the Raboteau massacre case should be prepared very carefully so that the trial can take place in the proper conditions and serve as a model.

80. Article 7 of the draft law on judicial reform, although its context is that of the struggle against impunity, raises a serious problem that must be considered at this time. When they declared that there would be no period of limitation for crimes and offences committed during the period from 30 September 1991 to 15 October 1994, it may be that the Haitian legislators did not take into account the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 26 November 1968. As the Uruguayan expert, Professor Rodolfo Schurmann Pacheco, observed during the series of international meetings on the impunity of perpetrators of serious human rights violations, organized in Geneva from 2 to 5 November 1992 by the Commission nationale consultative des droits de l'homme (France) and the International Commission of Jurists under the auspices of the United Nations:

> "Since antiquity, criminal limitation has consisted in a renunciation of the punitive intent, originally dispensed by judges and subsequently by the penal system, as a rule for crimes considered to be ordinary - according to the historical time and place - but not for those considered to be atrocities (including lèse-majesté, patricide, extortion, murder, forging money), which, by their very nature were held to be exceptions not subject to statutory limitation".

81. It is not being suggested that legislators should reject prosecution, but that prosecutions should be limited to the gravest crimes affecting large sectors of society, and offending the very conscience of mankind. The issue is to prevent, restrict and punish certain types of acts which, in the words of Alejandro Artucio, Legal Counsel to the International Commission of Jurists, violate the principles that should govern the life of civilized nations and contravene the purposes and principles proclaimed in the Charter of the United Nations, thus representing a threat to international peace and security.

82. It would be preferable if legislators declared that there would be no period of limitation for offences such as torture, political assassination and enforced and permanent disappearance. The particular gravity of these offences and their consequences for society have led some theoreticians to see them as crimes against humanity. Moreover, the Declaration on the Protection of All Persons from Enforced Disappearances adopted in December 1992 by the General Assembly considers that "enforced disappearance undermines the deepest values of any society ... and that the systematic practice of such acts is of the nature of a crime against humanity" (resolution 47/133).

83. Moreover, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes a quasi-universal system of justice with respect to torture, thereby encompassing the consequences of crimes against humanity. One of the effects of the application of article 7 of Haiti's draft law on judicial reform is that the courts, whose ability to handle cases still leaves something to be desired, will be inundated with all kinds of cases: assault and battery, theft, and so on. It is not certain that the legislators took account of article 51 of the Constitution, which provides that "the law cannot be applied retroactively, except in those criminal cases where it favours the accused".

84. It is therefore important to consider, before the final adoption of the law on judicial reform, what the relation is between the principle of legality and the rule concerning the period of limitation. Such limitation can be applied in the case of some crimes and offences, but not in the case of serious crimes such as torture, assassination and enforced disappearance. If the period of limitation is to be waived, it must be waived in connection with this class of major criminal offences - "because the recollection of such crimes does not fade from the memory of the generation that lived through them". It should also be noted that there is a tendency in domestic penal systems is to gradate the time-barring of offences, according to the maximum sentences established by law in the abstract.

85. One of the transitory provisions of the draft law on judicial reform is cause for concern. This is article 11, which provides that "it is the obligation of the State to ensure the final departure from the country of all foreign armed forces, in particular the United Nations contingent known as the United Nations Transition Mission in Haiti (UNTMIH), whose mandate expires on 30 November 1997". In the light of this report, there is a question as to the risks Haiti might incur if the United Nations contingent leaves. It would be advisable to work out an arrangement with the Haitian authorities that would ensure effective protection of the democratic system that has been built up but is still quite fragile.

86. The National Preparatory Commission for the Reform of Justice is ready to get down to work. Its one-year mandate is to determine the reforms needed, establish their cost and method of financing and set a timetable for putting them into effect. Aside from MICIVIH, which is participating in a working group set up to assist it, the Preparatory Commission will be receiving technical support from the European Union, and it should submit its report before the end of the year. In June 1997, a delegation from the Ministry of Justice went to Argentina to study the judicial system, and this prompted a mission from Argentina's Institute of Comparative Studies in Penal and Social Sciences to visit Haiti.

87. It is likely that experts from the Institute will be invited by the International Commission of Jurists to provide assistance, under a European Union/International Commission of Jurists contract for technical assistance. Thanks to efforts by MICIVIH, it has been possible to issue a compendium of circulars, which has been distributed to all prosecution and court officials and to police officers throughout the country. It is hoped that its use will help to prevent arbitrary and illegal practices. A pilot project sponsored by France

and the United States of America, which will train 60 justices of the peace to become judges of first instance, has been a welcome initiative.

88. The international community must continue supporting the process of judicial reform, because the judicial system is still far from healthy. If precautions are not taken, the cancer that has attacked the justice system may infect the police force and the National Penitentiary Administration (APENA). Certainly excessive haste should be avoided, but the delay in complying with even short-term recommendations is disturbing. The reason, of course, is that the Government has not yet clearly framed its policy in the sphere of justice. As a result, extended pre-trial detention and impunity are still the big problems: impunity in the broad sense, which is to say violation of human rights in the past and violation of the law in the present.

89. Is there a way out of this predicament, as long as decent investigations cannot be conducted because premises are deteriorated and judges and judicial personnel are in an unenviable position? A director has been named to head the judicial police and efforts are being made in the context of cooperation, but it will take a long time to reach the end of the tunnel. The situation is all the more disturbing because society is exasperated over the paralysis of judicial institutions.

90. MICIVIH has identified 350 cases in which proceedings have been initiated. In all probability, there are others. There are, for instance, 125 cases in Port-au-Prince; 90 in the Gonaives; 90 in the Plateau Central. These figures are provisional and concern cases for which a file has been opened by the public prosecutor's office and pre-trial proceedings have begun. Only a few of these files contain a record of a police investigation: in most instances, they contain only a complaint.

91. The quality of criminal procedure and the penal system is another source of concern, aggravated by the fact that the 1987 Constitution contains provisions that introduce changes with regard to judicial guarantees but are not often observed. The same applies to guarantees under the American Convention on Human Rights and the International Covenant on Civil and Political Rights, instruments ratified by Haiti in 1977 and 1991 respectively. On a daily basis, grave violations of basic rights are uncovered in the administration of justice.

92. Prolonged pre-trial detention is a perversion of the Haitian penal system. It takes the place of conviction in a judicial system that is improperly and inefficiently managed. The problem is compounded by the regime of pre-trial release pursuant to articles 95 and following of the Code of Criminal Investigation. A judge may not grant pre-trial release in cases involving theft and fraud, and in all other cases bail must be paid. Pre-trial detention thus becomes the rule, and release the exception. It is not difficult to understand why the prisons are overcrowded.

93. The Code of Criminal Investigation of 1835, which has undergone only minor revisions, should be given a major overhaul. The same applies to the Penal Code. The relationship between the office of the examining magistrate and the judicial police should be examined; use of the rogatory commission procedure could help to expedite the processing of cases.

94. If the situation is to change, an activist approach must be adopted. Certain measures cost money, but others require simply the expression of political will. This applies to the ratification of treaties. To this day, Haiti has not ratified the Convention against Torture, the International Covenant on Economic, Social and Cultural Rights or the Optional Protocol to the International Covenant on Civil and Political Rights.

95. What is more, Haiti has still not recognized the jurisdiction of the Inter-American Court of Human Rights. Yet an executive act (a presidential decree) is all that would be needed to declare that Haiti recognizes the jurisdiction of the Court pursuant to article 62 of the American Convention on Human Rights. This means that the failure to ratify is less a matter of refusal or political impasse than a problem of management. This also explains Haiti's delay in submitting its report to the Human Rights Committee.

XI. CONCLUSION

96. The human rights situation has improved considerably, to judge from the indicators of observance of civil and political rights. Although there is still some "political" violence and instances of violations, they are no longer massive in nature as in the past. As for the effective enjoyment of economic, social and cultural rights, the obstacles are enormous but not insurmountable. They stem from the civilian and military dictatorships that for decades abused political and economic power.

97. Today's political actors must also bear their share of responsibility because of the confrontation in which they are engaged, which could plunge the country into an unprecedented political crisis. Laudable efforts have been made to improve the operation of the police force and conditions in the prisons, but much remains to be done. However, the progress made could be wiped out unless there is an in-depth reform of the outdated Haitian judicial system.

98. Deteriorating political and socio-economic conditions resulting from the possible withdrawal of UNTMIH and MICIVIH could have tragic consequences for the future of Haiti and its move towards democratization. Even though the police force is becoming more professional, it is not yet in a position to maintain law and order by itself. Should the United Nations withdraw at the end of November, a formula should be devised for the provision of assistance, possibly through bilateral arrangements, especially with France, the United States of America and Canada.

99. There is no point in masking the truth; the disarmament of Haiti cannot be described as a success. There is therefore a real danger that after the last United Nations soldier has left the demons of the past, with their cortege of disasters, will reappear. This can be averted, provided that everyone does his part, beginning with the Haitians themselves. If the support of the international community were more coordinated, it would be more effective and time and money could be saved. The representatives of the international community have a tendency to criticize the Haitian Administration as a matter of course, and rightly so, but they should attempt some self-criticism. At present, the top priority must be to set up a competent and effective judicial system.